

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 18:070. Supplemental wages and other payments subject to withholding.

5 RELATES TO: KRS 141.010(22), 141.020, 141.310, 141.315, 341.020, 341.090, 341.395, 26 U.S.C.
6 3402(q)

7 STATUTORY AUTHORITY: KRS 141.050(4), 141.310(8), 141.315

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.050(4) requires the Department of
9 Revenue to promulgate administrative regulations and prescribe the forms and reports necessary for the
10 proper administration of any and all provisions of KRS Chapter 141. KRS 141.310(8) authorizes the
11 department to promulgate an administrative regulation for withholding in addition to those provided in KRS
12 141.310 and 141.315 if the employer and employee agree to additional withholding. KRS 141.315 requires
13 the department to promulgate administrative regulations governing certain specified types of payments.
14 This administrative regulation prescribes procedures for withholding income tax on gambling winnings,
15 supplemental wages, vacation pay, and unemployment benefits.

16 Section 1. Definitions. (1) "Benefit year" is defined by KRS 341.090(3).

17 (2) "Benefits" is defined by KRS 341.020(4).

18 (3) "Cabinet" means the Education and Workforce Development Cabinet as defined by KRS 341.005.

19 (4) "Department" means the Department of Revenue as [is-]defined by KRS 141.010(2).

20 (5) "Fund" is defined by KRS 341.020(1).

21 (6) "Gambling winnings" means winnings that are subject to withholding as defined by 26 U.S.C.

22 3402(q) of the Internal Revenue Code.

(7) "Supplemental wages" means payments made to an employee by the individual's employer in addition to regular wages.

Section 2. Gambling Winnings. Every person making a payment of gambling winnings shall deduct and withhold from the payment Kentucky income tax at the maximum tax rate provided in KRS 141.020.

Section 3. Supplemental Wages. (1) If supplemental wages are paid at the same time as regular wages, the tax to be withheld shall be determined as if the aggregate of the supplemental and regular wages were a single wage payment for the regular payroll period.

(2) If supplemental wages are paid at a different time, the employer shall determine the tax to be withheld by aggregating the supplemental wages either with the regular wages for the current payroll period or with the regular wages for the last preceding payroll period within the same calendar year.

Section 4. Vacation Pay. (1) If an employee receives vacation pay for the time of a vacation absence, the vacation pay shall be subject to withholding as though it were a regular wage payment made for the payroll period or periods which occur during the vacation.

(2) If vacation pay is paid in addition to regular wages to an employee who forgoes his vacation, the payments shall be treated as supplemental wages.

Section 5. Unemployment Benefits. (1) An individual filing a new claim for benefits shall:

(a) Be notified of the requirements established in KRS 341.395(1) by the Education and Workforce Development Cabinet; and

(b) Indicate on the initial or reopened claim for benefits ~~[Initial Claim Application, Form 401, incorporated by reference in 787 KAR 1:090,]~~ if the individual elects to have the state income tax imposed by KRS 141.020 deducted and withheld from the individual's benefits at the rate of four (4) percent. An individual may make the indication:

1. On paper by completing an "Initial Claim Application" as incorporated by reference in 787 KAR 1:090;
2. Electronically by submitting an Initial Claim Application online at <https://uiclaims.des.ky.gov/ebenefit>; or

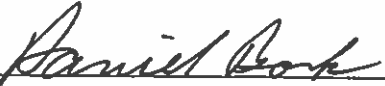
1 3. By any other means of filing an initial claim application as established by the cabinet and 787 KAR
2 1:090(2).

3 (2) The amounts deducted and withheld from benefits pursuant to subsection (1) of this section shall
4 remain in the unemployment insurance fund until transferred to the department as a payment of income tax
5 in accordance with the priority order established in 787 KAR 1:320.

6 (3) The cabinet shall follow all procedures pertaining to the deducting and withholding of income tax
7 specified in KRS 341.395(3) or by the department.

103 KAR 18:070

APPROVED BY AGENCY:



DANIEL P. BORK, COMMISSIONER
Department of Revenue
Finance and Administration Cabinet



Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on November 28, 2017, at 1:00 p.m. in Room 11A, Department of Revenue, 501 High Street, Frankfort KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3874 (fax), Lisa.Swiger@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 18:070

Contact Person: Lisa Swiger
Phone Number: (502) 564-9526
Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation updates 103 KAR 18:070 to clarify department filing requirements for an individual filing a claim for unemployment benefits and wishing to designate 4% be withheld for Kentucky income tax.

(b) The necessity of this administrative regulation: This amendment is necessary to update outdated language so taxpayers can more easily understand the requirements of the department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It clarifies all sources of filing that an individual may use to indicate their preference for having income tax withheld from their unemployment benefits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These changes will add additional methods of filing a claim for unemployment benefits and indicating the preference to withhold, or not to withhold income tax.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: See 1(d).

(b) The necessity of the amendment to this administrative regulation: To update outdated language to provide additional information to a taxpayer and avenues for filing an "Initial Claim Application, Form 401" provided by the Education and Workforce Development Cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: It provides the most up to date information possible to assist the taxpayers of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide information that may better assist those individuals who look to this regulation for guidance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any individual or employer needing guidance on types of income or other payments subject to withholding.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are required by any individual or entity to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to obtain the new information.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Additional information will provide additional avenues for filing by an individual or entity looking for ways to file a claim for unemployment benefits, or report wages, payments, etc.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs are expected. Current staff and funding will implement this amendment.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental budgetary funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established or increased with this amendment.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied. All persons or entities affected by this regulation will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 18:070

Contact Person: Lisa Swiger
Phone Number: (502) 564-9526
Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 141.050, 141.310 and 141.315.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no estimated effect on the expenses or revenues of any state or local agency from this administrative regulation. The amendment to this regulation affects employers and individuals needing information on wages and other payments subject to Kentucky income tax withholding.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None. It only adds additional information, such as a website address, to assist taxpayers when filing a claim for unemployment compensation to designate 4% of the amount to be withheld for Kentucky income tax.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: